

Generally, persons who provide subscribers access to the Internet ("ISPs") and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100. (This is a GIL).

November 30, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated August 5, 1999. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

BUSINESS AND COMPANY are Internet Service Providers, with Network Operation Centers located in STATE1 AND STATE2.

In addition to these Network Operation Centers, we have several POP's (Point of Presence) in your state. A POP can be leased space containing equipment designed to allow users in that community to establish a connection from their calling location to the Internet with a local phone call. These POP's typically contain incoming phone lines, access concentrator equipment, Internet routing equipment and a high-speed Internet connection to our main Network Operation Center, located in STATE 1 OR STATE 2. A POP can also be just a phone number for a particular community that is routed by a phone company serving that community through phone trunk lines leased by us to access equipment at one of the above mentioned POP's or at one of our Network Operation Centers.

I phoned the Illinois Department of Revenue, Sales and Tax Division, regarding the issue of sales tax on Internet services. From the information given to me during this phone call, it is my understanding that the state of Illinois does not charge tax on Internet service. I would like confirmation in writing of your law regarding this matter. Please forward such documentation to the following address:

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Should you have any questions regarding this matter, please do not hesitate to contact me at ####. I look forward to receiving this information from you.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. (1998 State Bar Edition), imposes a tax on Illinois retailers measured by a percentage of their gross receipts from sales of tangible personal property for use or consumption. When no retail sales of tangible personal property are made, no tax liabilities under the Retailers' Occupation Tax Act would be incurred. Generally, no Retailers' Occupation Tax liability is incurred on the sale of Internet access services. However, please note that the sale of canned software to Illinois users is considered to be the taxable sale of tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See subsection (a) of the enclosed copy of 86 Ill. Adm. Code 130.1935.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS 630/1 et seq. Section 2(c) of the Act defines "telecommunications," and states that this term does not include "value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." Section (2)(a)(3) of the Act states that the term, "gross charge," which forms the basis for the tax, does not include "charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content." 35 ILCS 630/2.

Generally, persons that provide subscribers access to the Internet ("ISPs") and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See subsection (d) of the enclosed copy of 86 Ill. Adm. Code 495.100. It is our general understanding that most ISPs do not, as part of their billing, charge customers for such line charges. Instead, the ISPs pay their telecommunications suppliers all transmission costs that they incur in providing the Internet service. Generally, the ISP's customers also pay their telecommunications suppliers for all transmission costs incurred while using the service. This being the case, the single monthly fee charged by such ISPs, which often represents a flat charge for a package of items including Internet access, E-mail and electronic newsletters, would generally not be subject to the Telecommunications Excise Tax.

However, please note that ISPs which provide customers with the Internet access described above, but who also provide customers the use of 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. They will incur Telecommunications Excise Tax on charges made for such 1-800 services.

If ISPs provide both transmission and data processing services, the charges for each must be disaggregated and separately identified. See subsection (c) of the enclosed copy of Section 495.100. The statute does not require

disaggregation on the customers' invoice, however. Therefore, it is the Department's position that the non-telecommunications charges are not subject to tax as long as they are disaggregated from the telecommunications charges in the retailers' books and records. If the non-telecommunications charges are not disaggregated from the telecommunications charges, all charges will be subject to Telecommunications Excise Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.